JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

- - - - - - - - - -

NO. 92-17040
CT/AG#: CV-90-00205-GEB (JFM)

FILED
JUL 19 12 40 PM '95
Clerk, U.S. District Court
Eastern District of California
By /s/ RM Deputy Clerk

JERRY ANDERSON; GLENNA BLAIR;
TERRY DAVIS; JOHN WARDWELL,
JESSE VASQUEZ; IRENE JAREZ
Plaintiffs - Appellees

v.

COUNTY OF KERN; JOHN SMITH, Sheriff
Defendants - Appellants

CALIFORNIA BOARD OF CORRECTIONS, amicus
Amicus

No. 93-15019
CT/AG#: CV-90-00205-GEB

JERRY ANDERSON; GLENNA BLAIR;
TERRY DAVIS; JOHN WARDWELL,
JESSE VASQUEZ; IRENE JUAREZ;
Plaintiffs - Appellees/Cross - Appellants

v.

COUNTY OF KERN; JOHN SMITH, Sheriff
Defendants - Appellants/Cross - Appellees

APPEAL FROM the United States District Court for the Easter District of California (Fresno).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of California (Fresno) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED in part and REVERSED AND REMANDED in part.

Filed and entered January 13, 1995
Amended by order filed July 7, 1995

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
/s/ Muller
JUL 17 1995
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JUL 7 1995
Cathy A. Catterson, Clerk
U.S. Court of Appeals

JERRY ANDERSON; GLENNA BLAIR;
TERRY DAVIS; JOHN WARDWELL,
JESSE VASQUEZ; IRENE JAREZ;
Plaintiffs-Appellants-
Cross-Appellees,

v.

COUNTY OF KERN; JOHN SMITH, Sheriff,
Defendants-Appellees-
Cross-Appellants.

No. 92-17040
No. 93-15019
D.C. No. CV-90-00205-GEB

ORDER

Before: POOLE, CANBY, and RYMER,
Circuit Judges.

The panel has voted to deny plaintiffs-appellants-cross appellees' petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to hear the matter en banc. Fed. R. App. P. 35.

Plaintiffs-appellants-cross appellees' petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

The opinion filed January 13, 1995 is amended to include the following footnote at the end of the second paragraph of Section I, at page 505 of the slip opinion and 45 F.3d 1310, 1313:

> We need not decide here whether, under some circumstances, the "deliberate indifference" standards under the Eighth and Fourteenth Amendments diverge. *See Redman v. County of San Diego*, 942 F.2d 1435, 1442-43 (9th Cir. 1991) (en banc). The plaintiffs did not differentiate between the two standards in their briefs, and emphasized the Eighth Amendment formulation, which we apply in this opinion. We are convinced that any possible divergence would not have affected the outcome of our decision.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
/s/ Muller
Deputy Clerk
JUL 17 1995